

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>BRIAN SALMON d/b/a MID-STATES ASBESTOS REMOVAL, INC.</b> Davis City, South Dakota	ADMINISTRATIVE CONSENT ORDER   NO. <del>2006</del> -AQ- 04 2007-
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TO: Brian Salmon  
Mid-States Asbestos Removal, Inc.  
28172 463<sup>rd</sup> Avenue  
Davis City, South Dakota 57021

**I. SUMMARY**

This administrative consent order is entered into between Brian Salmon d/b/a Mid-States Asbestos Removal, Inc. (Mid-States) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving National Emission Standards for Hazardous Air Pollutants (NESHAP) violations from an asbestos abatement project at Oak Haven Care Facility (Oak Haven). The parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Marion Burnside  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8443

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated and permits issued pursuant thereto; and Iowa Code section 455B.109 and

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567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. Mid-States is an asbestos abatement company located in Davis City, South Dakota. Mid-States is a licensed asbestos abatement contractor in the state of Iowa. Dickinson County Board of Supervisors contracted with Mid-States to remove 500 feet of asbestos-containing pipe wrap and associated debris in the tunnels and basement of Oak Haven. Oak Haven is a care facility located in Spirit Lake, Iowa and is owned by Dickinson County. The asbestos abatement project was being done prior to a renovation project at Oak Haven.

2. On June 15, 2006, DNR received an original asbestos NESHAP notification from Mid-States for an asbestos abatement project at Oak Haven involving the removal of 500 linear feet of asbestos containing pipe wrap and associated debris in the tunnels and basement. The project was scheduled to start on June 28, 2006 and be completed by July 12, 2006.

3. On July 10, 2006, DNR received a revised asbestos NESHAP notification from Mid-States changing the project start date to July 5, 2006 and the completion date to July 19, 2006 at Oak Haven.

4. On July 20, 2006, Marion Burnside, DNR asbestos NESHAP coordinator, conducted an inspection at the facility. Mid-States had completed the project and had left the site at the time of Mr. Burnside's inspection. Dry suspect pipe wrap debris was found in several places in areas where Mid-States had conducted the asbestos removal operation. Four samples of the suspect debris were collected for asbestos content analysis. Following the inspection, Brian Swartzbaugh, maintenance at the facility, informed Marion Burnside that Mid-States returned to the site on more than one occasion to complete the clean-up.

5. On July 25, 2006, DNR submitted the samples collected on July 20, 2006, to the University of Iowa Hygienic Laboratory for asbestos content analysis.

6. On August 3, 2006, DNR received the analytical results for samples submitted to the University of Iowa Hygienic Laboratory on July 25, 2006. The four samples contained regulated quantities of chrysotile asbestos (50%, 20%, 40%, and 20%).

7. On August 7, 2006, DNR issued a Notice of Violation letter to Mid-States for failing to keep all regulated asbestos containing material adequately wet until collected and failing to seal all asbestos containing waste material in leak tight containers.

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A Notice of Violation letter was sent to the Dickinson County Board of Supervisors for the same violations.

8. Mid-States possesses prior knowledge of the asbestos regulations. On August 9, 2001, Mid-States was issued a Notice of Violation letter for an asbestos abatement project at Whittier Elementary School in Sioux City, Iowa. The letter cited Mid-States for failing to remove all asbestos containing material and failing to keep all asbestos containing material adequately wet. On October 15, 2001, Mid-States was issued a Notice of Violation letter for an asbestos abatement project at city owned buildings in Sioux City, Iowa. The letter cited Mid-States for failing to keep all asbestos containing material adequately wet. On May 2, 2002, Mid-States was issued a Notice of Violation letter for an asbestos abatement project at the Stockyards in Sioux City, Iowa. The letter cited Mid-States for notification violations. On April 4, 2002, Administrative Order No. 2002-AQ-21 was issued to Mid-States for the violations cited in the October 15, 2001 Notice of Violation letter.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. During an inspection on July 20, 2006, of Oak Haven, Mr. Burnside found dry asbestos containing material. The above facts indicate that Mid-States was not in compliance with this provision.

3. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a)(1)(iii) provides that all asbestos containing waste materials, while wet, shall be sealed in leak-tight containers or wrapping. During the July 20, 2006, inspection of Oak Haven, Mr. Burnside found dry asbestos containing material that was not sealed in a leak-tight container. The above facts indicate noncompliance with this provision.

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**V. ORDER**

THEREFORE, the DNR orders and Mid-States agrees to do the following:

1. Mid-States shall pay a penalty of \$6,000.00 in accordance with the following payment plan:

\$3000.00 due December 15, 2006 and  
\$3,000.00 due February 15, 2007.

**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$6,000.00. The administrative penalty is determined as follows:

- a. Economic Benefit. Failure to follow the proper asbestos NESHAP regulations for asbestos removal and disposal may have allowed Mid-States to save time and money. However, Mid-States returned to the site on more than one occasion to complete the clean-up. This reduced any benefit the company would have initially gained. Therefore, no economic benefit is being assessed.

- b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The integrity of the asbestos NESHAP program is threatened when all regulated asbestos containing material is not removed during an abatement project and left in a dry condition following the removal project. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to keep the asbestos containing material adequately wet and failure to seal all asbestos containing waste material in a leak-tight container created an environmental hazard to the general public and to residents of the care facility. Mid-States has been and is a licensed asbestos abatement contractor with prior knowledge of the asbestos regulations and a prior administrative order. Therefore, \$4,000.00 is assessed for the documented violations.

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This includes \$2,000.00 for failure to keep the asbestos containing material adequately wet and \$2,000.00 for failure to seal asbestos containing waste material in a leak-tight container.

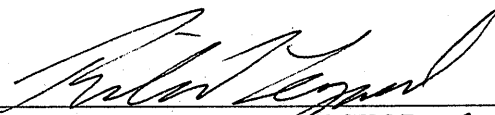
c. Culpability. Mid-States has a duty to remain knowledgeable of the DNR's requirements, including requirements of the federal asbestos NESHAP regulations. The company has prior knowledge of the asbestos NESHAP requirements in that it has received prior notice of violation letters, as well as an administrative order for similar violations as those cited in this order. Mid-States is a licensed asbestos abatement contractor in the state of Iowa and its supervisors and workers are trained in the dangers of asbestos and use of the correct methods required to control asbestos emissions during asbestos removal operations. Therefore, \$2,000.00 is assessed for culpability.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly by and with the consent of Mid-States. For that reason, Mid-States waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

  
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JEFFREY R. VONK, DIRECTOR *Richard Leopold*  
Iowa Department of Natural Resources

Dated this 27 day of  
January, 2006.  
2007.

  
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MID-STATES ASBESTOS REMOVAL, INC.

Dated this 27 day of  
December, 2006

Con 10-15-01732; Kelli Book; Marion Burnside; Joe Sanfilippo; VII.C.4